

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:08 cr 117**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>DAVID SIMMONS,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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THIS CAUSE coming on to be heard before the undersigned, and at the call of this matter on for hearing on December 18, 2008 for the purpose of conducting a proceeding, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the defendant made a motion to strike surplusage from the indictment, pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure, and after hearing arguments from the attorney for the defendant and being advised by the government that the government had no objection to the motion, it is ordered as follows:

**ORDER**

IT IS, THEREFORE, **ORDERED** that the following language be stricken from the indictment in this matter, said language being surplusage: "and having been convicted on or about July 9, 2003 in the Superior Court of Cleveland County, North Carolina, of a crime punishable by imprisonment for a term exceeding one year", **GRANTED** pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure.

Signed: December 30, 2008

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

